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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICE PIERRE OLIVIER,

Defendant and Appellant.

B200923

(Los Angeles County  
Super. Ct. No. SA060812)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Robert P. O'Neill, Judge. Affirmed.

William Flenniken, Jr., under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Theresa A.  
Patterson and Susan S. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Maurice Pierre Olivier was convicted of one count of first degree residential burglary and numerous prior convictions. He was sentenced under the “Three Strikes” law to 25 years to life, plus 20 years for four 5-year prior conviction enhancements.<sup>1</sup> He contends that the trial court abused its discretion when it (1) denied his request for a pre-preliminary hearing lineup; and (2) imposed a restitution fine in the maximum amount, \$10,000, without considering his ability to pay.

We find that the first issue lacks merit and the second issue was waived for lack of an objection. We therefore affirm.

## **FACTS**

### ***1. Prosecution Evidence***

On May 25, 2006, Mr. and Mrs. Moss were away on vacation. When at home, they lived with their adult daughter, Francine, in “Unit 103” of a condominium complex in Los Angeles.<sup>2</sup> Francine left for work around 3:00 p.m. that day. She was still at work around 9:40 p.m. that night when her neighbors in “Unit 104,” the Pynes, heard a “series of loud bangs” at the back of the building. Mr. Pyne went out to the balcony and yelled out a question about the noise. There was no response. Mrs. Pyne dialed 911, but the police did not respond immediately.

Unit 104 was directly across the hall from Unit 103. Looking through the “peek hole” of his closed front door, Mr. Pyne saw appellant come out of the front door of Unit 103. Appellant was holding a white plastic trash bag that was filled with objects and had

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<sup>1</sup> Appellant’s prior convictions were charged as strikes under the Three Strikes law and as convictions that qualified for the five-year enhancement of Penal Code section 667, subdivision (a)(1). (Subsequent code references are to the Penal Code unless otherwise stated.) They consisted of a conviction for robbery in Los Angeles in 1992, four federal convictions for bank robbery in 1994, and five convictions for robbery in Los Angeles in 1996. The trial court found that all of the prior convictions were strikes, but only four of them qualified for the enhancement.

<sup>2</sup> For clarity and convenience, and meaning no disrespect, we refer to Francine by her first name.

other objects stuffed inside his shirt. Appellant closed the door of Unit 103 and walked toward the building's front door.

Mr. and Mrs. Pyne knew that Mr. and Mrs. Moss were out of town and Francine was at work. They believed that appellant should not have been inside Unit 103. Mr. Pyne dialed 911 and described appellant. Police officers arrived, spoke to Mr. Pyne, and broadcast a description of appellant to police units and a police helicopter. Within minutes, the helicopter located appellant, two or three blocks away. Officers went there and detained appellant, who was still holding the trash bag. At the officers' order, he dropped the bag and placed his hands on his head. Looking at the bag, he said, "That's my stuff."

An officer drove Mr. Pyne to view appellant where he had been detained. En route, Mr. Pyne was given the usual admonition about viewing a suspect in the field. Mr. Pyne saw appellant and observed, "That's definitely him." He was also positive about that fact at the trial.

When Francine returned home, she saw that her unit had been ransacked, items of property were missing, and a window pane on the rear patio door was broken. The missing items of property were inside the trash bag appellant carried. The items were returned to Francine.

## ***2. Defense Evidence***

Dr. Mitchell Eisen an expert in the area of eyewitness identification and memory, testified on subjects like the suggestive aspects of an in-field showup and the lack of correlation between a witness's confidence and the accuracy of an identification.

On the day of the burglary, appellant worked as an administrative assistant at a bank in downtown Los Angeles. He worked a regular day and left the bank shortly after 6:00 p.m.

## DISCUSSION

### *1. Denial of a Pre-preliminary Hearing Lineup*

Appellant contends that denial of his motion for a lineup prejudicially tainted Mr. Pyne's identifications of him in the courtroom, resulting in the denial of a fair trial under the federal and state Constitutions.

#### *A. The Record*

The crime and appellant's arrest occurred on May 25, 2006.

On July 6, 2006, appellant elected to represent himself under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). He filed a motion for bail reduction that day, but did not request a lineup.

At 1:45 p.m. on July 20, 2006, the following discussion ensued when the case was called for a preliminary hearing before Judge Katherine Mader:

"THE COURT: Maurice Olivier, SA060812. Mr. Olivier is present in court with Ms. Stevens from the D.A.'s office. [¶] And Mr. Olivier, you're representing yourself; is that correct?"

"THE DEFENDANT: Yes, Your Honor.

"THE COURT: Are you ready for your preliminary hearing today?"

"THE DEFENDANT: Not really because I just asked the bailiff was there any witnesses out here to testify for the preliminary hearing.

"THE COURT: Yes.

"THE DEFENDANT: Well, I wanted to get a line-up.

"THE COURT: Well --

"THE DEFENDANT: It's too late now.

"THE COURT: I had no notice that you wanted to continue. And the witnesses have been here all morning. And so --

"THE DEFENDANT: Well, it's too late now.

"THE COURT: Yeah. We're going to have the preliminary hearing."

After a pause in the proceedings, appellant complained that he had not been indicted by a grand jury. Judge Mader told him the case was proceeding by complaint

and not by indictment. She asked the prosecutor to call the first witness. The prosecutor stated that there were witnesses outside the courtroom, and the first witness would be Francine. Appellant said, “If they are outside, I want to request a line-up.” Judge Mader responded, “Okay. This is the time for the preliminary hearing. I’ve not received any motion for a line-up or any motion to continue the preliminary hearing. So your request is denied.” The preliminary hearing then proceeded. Its evidence included another identification of appellant by Mr. Pyne.

### *B. Analysis*

“[D]ue process requires in an appropriate case that an accused, upon timely request therefor, be afforded a pretrial lineup in which witnesses to the alleged criminal conduct can participate. . . . [¶] . . . [¶] The broad discretion vested in a trial judge or magistrate includes the right and responsibility on fairness considerations to deny a motion for a lineup when that motion is not made timely. Such motion should normally be made as soon after arrest or arraignment as practicable.” (*Evans v. Superior Court* (1974) 11 Cal.3d 617, 625-626.)

There was no abuse of discretion in the denial of appellant’s motion for a pre-preliminary hearing lineup. The trial court correctly ruled that the motion was made too late, as it occurred on the day of the preliminary hearing, just before witnesses were to be called. Moreover, appellant had an opportunity to request a lineup when his *Faretta* motion was granted on July 6, 2006.

### **2. The Restitution Fine**

Section 1202.4 “recognize[s] two distinct types of restitution: *restitution fines* (P.C. 1202.4(b)), which are not directly related to the loss sustained by the victim of the crime, and *restitution to the victim* (P.C. 1202.4(f)) which is based on the actual loss.” (3 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Punishment, § 97, p. 152.) The trial court required no victim restitution, as the victims suffered no financial loss. It imposed the maximum possible restitution fine, \$10,000, based on appellant’s age and the length of his sentence. Appellant contends that the trial court abused its discretion when it imposed the maximum fine without considering his ability to pay the fine. The

issue is waived, as a defendant “cannot object for the first time on appeal to the imposition of a restitution fine on the ground of an inability to pay.” (*People v. Forshay* (1995) 39 Cal.App.4th 686, 688; see also *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468.)

**DISPOSITION**

The judgment is affirmed.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.